

AN ORDINANCE ESTABLISHING A LIMITED POLICY OF THE
CITY OF FORT SMITH, ARKANSAS, FOR THE HEARING AND SETTLING
OF SPECIFICALLY IDENTIFIED TORT CLAIMS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Section 1: The attached Limited Policy of the City of Fort Smith, Arkansas, for the Hearing and Settling of Specifically Identified Tort Claims ("Policy") is hereby adopted. The Policy supercedes the City's previous policy adopted by Ordinance No. 69-02.

Section 2: Chapter 2, Article V, Section 2-221 of the Fort Smith Municipal Code is hereby amended to provide as follows:

The "Limited Policy Of The City Of Fort Smith, Arkansas, For The Hearing And Settling Of Specifically Identified Tort Claims" incorporated herein and made a part hereof, is hereby adopted. The Policy is not set out herein, but is on file and available for inspection in the office of the city clerk. The city administrator is hereby authorized to approve for payment claims resolved under the policy from funds appropriated for that purpose. The maximum reimbursement shall not exceed five hundred dollars (\$500.00) per structure per occurrence for sanitary sewer backup claims. The maximum reimbursement shall not exceed three thousand dollars (\$3,000.00) per property per occurrence for water main line break claims. The maximum reimbursement shall not exceed five hundred dollars (\$500.00) per claim for vehicle damage caused by displace manhole lid. The maximum reimbursement shall not exceed ten thousand dollars (\$10,000.00) per single property for building foundation settlement claims.

Section 3: Emergency Clause. It is determined that the adoption of an amended policy for the hearing and settling of specifically identified tort claims is essential to the appropriate administration of the relationship of the city with potential claimants and that the amendments adopted by this Ordinance are in the public interest. Therefore an emergency is declared to exist, and this Ordinance, being necessary to preserve the health, safety and welfare of the inhabitants


of the city, shall be in effect from and after its date of approval.

This Ordinance Passed and Approved this 4th day of September 2012.

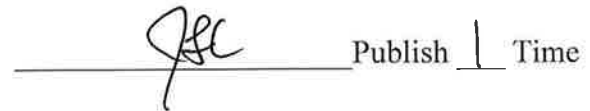
APPROVED:


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

 Publish 1 Time

LIMITED POLICY OF THE CITY OF FORT SMITH, ARKANSAS FOR THE HEARING AND SETTLING OF SPECIFICALLY IDENTIFIED TORT CLAIMS

This policy is established to govern the hearing and settling of tort claims arising because of the actions of the employees of the City of Fort Smith. The City acknowledges its immunity from liability, except to the extent that the City may be covered by liability insurance, for damages and further acknowledges that no tort action is permitted to lie against the City because of the acts of its agents and employees. A. C. A. Section 21-9-301 (Repl. 1995). The City determines, by this policy, to hear and settle only those specifically identified tort claims described in the policy and no others, and the City agrees to hear and settle the specifically identified claims only pursuant to the expressed procedures and limitations of liability set forth in this policy. The City reserves the right to amend or repeal in its entirety the policy at any time irrespective of any prior occurrence which could result in a claim(s) or the pendency of a claim(s).

I. TORT CLAIMS AS TO WHICH POLICY APPLIES.

Unless limited by the third sentence of this paragraph I, and according to the limitations and procedures set forth in this policy the City shall receive for hearing and settling tort claims involving allegations of property damage from a sanitary sewer back-up a water main line break, vehicle damage caused by displaced manhole lid or building foundation settlement caused by excavation associated with a City owned underground utility line or facility arising from the negligent actions of employees of the City. No other tort claims shall be received for processing pursuant to this policy.

Specifically, this policy shall not authorize the processing of claims of personal injury or claims arising from intentional acts of City agents and employees, claims of strict liability, claims

not directly related to the performance of the job duties of the involved City employees (even though they may have been "at work" at the time of the occurrence), or claims covered by any liability insurance policy obtained by the City, obtained by others for the benefit of the City, or obtained by others for their own benefit.

"Sanitary sewer back-up" shall refer solely to property damage claims arising from the negligent actions of City employees proximately causing sanitary sewer flows to discharge from the City's sanitary sewer lines directly (not by over land surface flow) into a structure then utilized for residential, commercial or industrial purpose.

"Water main line break" shall refer solely to property damage claims arising from the negligent actions of city employees proximately resulting in water flow from breaks in City water distribution lines (but not service lines from distribution lines to individual water meters) to enter into residences or structures, or which otherwise causes damage to property.

"Vehicle damage caused by displaced manhole lid" shall refer solely to damage to a vehicle arising from the vehicle striking a sanitary sewer manhole in a public roadway where the manhole lid has been displaced.

"Building foundation settlement" shall refer solely to property damage arising from the negligent actions of City employees during excavation associated with a City owned underground utility line or facility.

II. PROCEDURE FOR PROCESSING CLAIMS.

The following procedures shall govern the processing of claims submitted pursuant to this policy.

- (a) The term "City Administrator" shall refer to the City Administrator or his designated agent.

- (b) All claims resulting from an occurrence of back-up on a date prior to the adoption of this policy shall be processed under the policy established by Ordinance 69-02. All claims resulting from an occurrence of back-up or water main line break on the date or the after the date of adoption of this policy shall be processed under this policy. All claims resulting from an occurrence of building foundation settlement associated with excavation on a date after January 1, 2009, shall be processed under this policy.
- (c) Any person making a sanitary sewer backup claim, a water main line break claim, or a vehicle damage claim may provide in writing to the City Administrator within thirty (30) days of the occurrence a notice of intention to file a claim. Notice of intention to file a building foundation settlement claim must be provided to the City Administration within three hundred sixty-five (365) days of the excavation activity proximately resulting in the building foundation settlement (any foundation settlement claim asserted with reference to excavation work occurring after January 1, 2009, and presented to the City Administrator prior to the adoption of this 2012 amended policy will be considered as meeting the required notice). Any person who complies with this notice provision may thereafter, within the time limit and according to the procedures set forth in (d) below, file a written claim.
- (d) All claims shall be submitted in writing (containing the name, address and telephone number of the claimant) delivered to the City Administrator within the time periods provided in (c) or, if notice of intention to file a claims has been provided pursuant to (c), within sixty (60) days of delivery of the notice of intention to file a claim. If delivered in writing within the time period provided in (d), the claimant may request an extension of time for filing a claim which may be considered at the discretion of the City Administrator.
- (e) All claims from a sanitary sewer back-up into a single structure shall be consolidated and handled as one claim subject to the \$500.00 limitation provided by Section III (b). All claims from a water main line break across a single property shall be consolidated and handled as on claim subject to the \$3,000.00 limitation provided by Section III (b). All claims for vehicle damage arising from a single occurrence of displaced manhole lid shall be subject to the \$500.00

limitation provided by Section III (b). All claims of building foundation settlement for individual buildings (including detached structures) across a single property shall be consolidated and handled as a claim subject to the \$10,000.00 limitation provided by this policy.

When used in this policy, the term “single property” refers to real property, irrespective of platting or description as more than one lot or parcel, owned by the same person, persons, entity or entities.

- (f) All claims, shall be considered by the City Administrator, who shall determine all requisite facts under this policy, including the existence of negligence as described in Section I. The City Administrator shall have the authority to recommend for payment, from funds appropriated for that purpose, such claims. With reference to the existence of negligence on sanitary sewer backup claims, the City Administrator shall assume that any discharge originating in the sewer system of the City (as opposed to the claimant’s service line) proximately arose from a negligent action of the City unless the City Administrator determines there is objective evidence of another caused of the back-up. With reference to the existence of negligence on water main line break claims, the City Administrator shall assume that any flow of water from a broken City water main line proximately arose from a negligent action of the City unless the City Administrator determines there is objective evidence of another cause of the water main break. With reference to the existence of negligence on vehicle damage from a displaced manhole lid, the City Administrator shall assume that any such damage proximately arose from a negligent action of the City unless the City Administrator determines there is objective evidence of another cause of the displaced manhole lid. With reference to the existence of negligence on building foundation settlement, the City Administrator shall assume that any such damage proximately arose from a negligent action of the City unless the City Administrator determines there is objective evidence of another cause of the building foundation settlement.
- (g) Claims denied, in whole or part, by the City Administrator may be appealed to the Board of Directors of the City. A claimant shall have a period of ten (10) days, from the date of notification by the City Administrator, to appeal the decision to

the governing body of the City. Said notification shall be issued by first class mail to the address indicated by the written claim of the claimant. The ten day period will run from the date of issuance of notification for any claimant whose address is located within the City of Fort Smith. In the event that the claimant's address is located outside the City of Fort Smith, a period of four (4) days shall be added to the period in which an appeal to the governing body may be submitted.

- (h) A claimant's appeal shall be filed in writing and filed with the City Administrator, and the appeal shall be scheduled before the Board of Directors of the City and the claimant notified of the date of the hearing.
- (i) In addition to the other limitations set forth in this policy, compensation paid for damage to real or personal property shall be limited to the cost of repair of the damage or, in the event that the cost of repair exceeds the fair market value of the subject property, less salvage value, compensation shall be limited to the fair market value of the damage property minus any salvage value. No compensation shall be granted for inconvenience, loss of use, loss of profits, dislocation expenses or personal injury including, without limitation, emotional distress.
- (j) Unless the requirement is waived or modified by the City Administrator, the claimant shall submit three qualified estimates of the cost of repair of the property in question or three opinions of qualified persons of the fair market value, minus salvage costs, of damaged property.
- (k) For vehicle damage claims arising from a displaced manhole lid, the claimant must also submit a police report documenting the incident.
- (l) The provision of this policy regarding types of claims subject to the policy, limitation periods, limitations on coverage and the other provisions of the policy shall be applicable to all claims including those appealed to the Board of Directors.

III. ADDITIONAL LIMITATIONS ON CLAIMS.

In addition to limitations set forth at other places in this policy, all claims shall be subject

to the following limitations.

- (a) No compensation shall be paid on the basis of any claim accruing to the benefit, directly or indirectly, of an insurance carrier. In particular, no compensation shall be based on any claim for property damage if the item of expense is covered by any insurance provision. Any claim may be rejected by the City Administrator or the Board of Directors from further handling in the event that the claimant fails to comply with any reasonable requirement of the City Administrator or the Board of Directors regarding determinations of insurance coverage.
- (b) Under no circumstances shall the City pay in excess of \$500.00 on any sewer backup claim or any vehicle damage claim. Under no circumstances shall the City pay in excess of \$3,000.00 on any water main line break claim. Under no circumstances shall the City pay in excess of \$10,000.00 on any building foundation settlement claim.
- (c) During any budget year, no claim shall be processed if the total budget appropriation for handling the claims has been expended.
- (d) Acceptance of the sum paid by the City on a claim will constitute a release and discharge of the City from any and all other liability for existing or future claims arising from the occurrence which gave rise to the claim of back-up. Additionally, the acceptance shall acknowledge the limitation set forth in the next sub-paragraph regarding future occurrences.
- (e) After the City has paid a sewer back-up claim at a location in the City (either under this policy, the policy or previous policies), the City shall not thereafter consider or pay a claim under this policy arising from a sewer back-up at the same location presented by the previously paid claimant or said claimant's spouse or immediate family member (parent or child or related person residing in same household).
- (f) This policy shall not apply where there is a written agreement absolving or releasing the City of liability from damage caused by a water main line break.

- (g) As to building foundation settlement claims, this policy shall not permit the processing or paying of a claim of damage to a building which encroaches into a dedicated easement, prescriptive easement area, right-of-way or setback area established by City ordinances which benefit City installation, replacement or maintenance of an underground utility line or facility or where there is a written agreement absolving or releasing the City from liability for damage which may occur due to the presence of an existing or future City underground utility line or facility.

Dated this 4th day of September, 2012.